

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SIKAI TELEA,

No. C-10-2001 TEH (PR)

Petitioner,

v.

ORDER GRANTING RESPONDENT'S
UNOPPOSED MOTION TO DISMISS

K. HARRINGTON, Warden,

Respondent.

(Doc. #5)

_____ /

Petitioner, a state prisoner incarcerated at Kern Valley State Prison in Corcoran, California, has filed a pro se Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254 challenging a criminal judgment from San Mateo County Superior Court. Doc. ## 1 & 3.

I

On July 12, 2005, Petitioner was sentenced to life in state prison without the possibility of parole following his convictions by jury in San Mateo County Superior Court of two counts of murder, six counts of robbery and four counts of attempted

1 murder. Doc. #1 at 2-3; Doc #3 at 2-3.

2 Petitioner appealed, and the California Court of Appeal
3 affirmed the judgment of the superior court in an unpublished
4 opinion. People v. Telea, No. A110926, 2008 WL 4997608 at *1 (Cal.
5 Ct. App. Nov. 25, 2008); see Doc. #5-1 at 2-23. On February 11,
6 2009, the California Supreme Court denied a petition for review.
7 Id.; see Doc. #5-1 at 25-26.

8 The docket in the instant action shows that on May 10,
9 2010, an unsigned and undated federal petition for a writ of habeas
10 corpus was filed in this Court on behalf of Petitioner by
11 Petitioner's appellate counsel. Doc. #1. The court-approved form
12 petition contained neither legal claims nor supporting factual
13 allegations; it did, however, list three typewritten case citations.
14 See Doc. #1 at 6-7. The petition contained the following undated
15 typewritten "verification" from Petitioner's appellate counsel:

16 I am the attorney appointed to represent
17 Petitioner Telea in his state appeal. I have
18 prepared the foregoing petition on petitioner's
19 behalf because he is foreign born and his
20 English writing skills are not good. I am
21 authorized by petition[er] [to] file this
22 petition on his behalf, pursuant to rule 2(c),
23 R[ules] Governing section 2254 cases and 28
24 U.S.C. section 2242. I verify under penalty of
25 perjury that the contents of the petition are
26 true and correct to the best of my knowledge.

27 Doc. #1 at 7. The verification was signed by counsel. Id.

28 The docket also shows that the Clerk notified Petitioner
that his initial filing was deficient due to the incomplete petition
and that on June 8, 2010, the Court filed another petition. Doc. ##
2 & 3. This petition, like the first, used the court-approved form,
but was completed by hand, signed by Petitioner and dated May 27,

2010. See Doc. #3. The petition raised five separate legal claims pertaining to the exclusion of particular forms of defense evidence and violations of Petitioner's rights under Miranda v. Arizona, 384 U.S. 436 (1966) and Doyle v. Ohio, 426 U.S. 610, 618-19 (1976). Id. After the Court issued an order to show cause why the petition should not be granted, in lieu of an Answer, Respondent filed a Motion to Dismiss the Petition as untimely under 28 U.S.C. § 2244(d). Doc. #5. That motion, filed August 12, 2010, is unopposed.

II

A

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") became law on April 24, 1996 and imposed for the first time a statute of limitations on federal petitions for writs of habeas corpus filed by state prisoners. Petitions filed by prisoners challenging non-capital state convictions or sentences must be filed within one year of the latest of the date on which: (1) the judgment became final after the conclusion of direct review or the time passed for seeking direct review; (2) an impediment to filing an application created by unconstitutional state action was removed, if such action prevented petitioner from filing; (3) the constitutional right asserted was recognized by the Supreme Court, if the right was newly recognized by the Supreme Court and made retroactive to cases on collateral review; or (4) the factual predicate of the claim could not have been discovered through the exercise of due diligence. See 28 U.S.C. § 2244(d)(1)(A)-(D). Time

1 during which a properly filed application for state post-conviction
2 or other collateral review is pending is excluded from the one-year
3 time limit. Id. § 2244(d)(2).

4 Here, the limitation period commenced on May 13, 2009,¹
5 when the ninety-day period for filing a petition for a writ of
6 certiorari expired. See 28 U.S.C. § 2241(d)(1)(A). Thus, absent
7 tolling, the limitation period expired a year later on May 13, 2010.
8 See 28 U.S.C. § 2241(d)(1).

10 B

11 Section 2244(d)(2) tolls the one-year limitation period
12 for the "time during which a properly filed application for State
13 post-conviction or other collateral review with respect to the
14 pertinent judgment or claim is pending." 28 U.S.C. § 2244(d)(2).
15 But, an application for federal habeas corpus review is not an
16 "application for State post-conviction or other collateral review"
17 within the meaning of § 2244(d)(2). Duncan v. Walker, 533 U.S. 167,
18 180-81 (2001). Thus, the running of the limitation period is not
19 tolled for the period during which a petition is pending in federal
20 court. Id. at 181.

21 Here, presumably the document filed on May 10, 2010 by
22 Petitioner's appellate counsel - which contained neither legal
23


24 ¹ The period of statutory tolling is calculated according to the
25 general rule for counting time in federal courts, Rule 6(a) of the
26 Federal Rules of Civil Procedure. Patterson v. Stewart, 251 F.3d
27 1243, 1246 (9th Cir. 2001). That is, "the day of the act, event, or
28 default from which the designated period of time begins to run shall
not be included" in the one-year limitation period. Fed. R. Civ. P.
6(a). Thus, the limitation period began running on May 13, 2009,
rather than May 12, 2009, as Respondent states. See Doc. #5 at 3.

1 claims nor factual allegations in support thereof - was intended to
2 stop the limitation period. Regrettably for Petitioner, it did not.
3 Duncan, 533 U.S. at 180-81. Even more unfortunate for Petitioner is
4 that when he filed a petition on May 27, 2010 - one that did raise
5 legal claims and supporting factual allegations, that petition was
6 two weeks past the limitation period. The petition is untimely.
7 Respondent's unopposed Motion to Dismiss (Doc. #5) is GRANTED.

8 The Clerk is directed to terminate any pending motions as
9 moot and close the file.

10
11 IT IS SO ORDERED.

12
13 DATED 01/18/2011



THELTON E. HENDERSON
United States District Judge